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IN THE HIGH COURT OF KARNATAKA AT BANGALORE
DATED THIS THE 30 TH DAY OF MAY 1998

BEFORE

THE HON'BLE MR. JUSTICE H.RANGAVITTALACHAR
HRRP NO.754/94
Between

D.N.Bhaskar,
s/o.Sri.D.Narayanappa,
age: 38 years,
No.76,Patalamma Road,
III Block, Jayanagar,
Bangalore - 560 011. .. Petitioners

(Adv.M.Kumaravel - Adv.)

AND

1. Smt.R.S.Mahalakshmi Major,
w/o.Dr.Raja Suryanarayan,
age: 62 years,
2. Dr.Raja Suryanarayana,
s/o.late Raja Narasaiah Setty,
age: 76 years. .. Respondents

Both residing at No.76, Diagonal Road,
III Block, Jayanagar, Bangalore -560011.

(By Sri.R.Anantha Ramaiah - Adv.)

This HRRP is filed under Sec.50(1) of KRC Act,
against the order dtd.19.3.94 passed in HRC
No.10371/91 on the file of the IV Small Causes
Judge, Mayo Hall, Bangalore allowing the
petition filed under Se .21(1)(h) of KRC Act.

This HRRP coming on for hearing this
day, the Court made the following:

O R D E R

ORDER

Respondent No.1 to this petition filed an eviction petition against the petitioner seeking eviction of the shop premises in his occupation on the ground that the said shop and the adjacent shops are situated next to the residential house so it is required for the purpose of establishing a Clinic to treat Psychiatric and Neurologic patients by her husband who was a practising Doctor in Psychiatric and Neurologic patients in Florida, America and since he is retired and staying permanently at Bangalore, he intends to set-up a clinic. Other than the schedule premises and the adjacent premises in occupation of different tenants, they do not any other premises, therefore the premises is reasonably and bonafide required for their own use and occupation.

This petition was resisted by the petitioner/tenant, by filing a detailed statement of objections denying his requirements as neither reasonable nor bonafide. The tenant also took up the plea

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that the respondents are green card holders and their only intention is to sell the property and return to America.

Parties went to trial and led evidence on the basis of their pleadings. The first respondent examined herself and her husband in support of their case while the tenant examined himself in support of his case.

It has to be stated that this petition was also taken-up together with another eviction petition filed by the respondent for the same purpose against one Ramesh Sindhe - occupant of another room, by his ^{learned Judge} common order, allowed both the eviction petitions. Petitioners herein being aggrieved by the order of eviction passed against him in HRC No.10371/91 has filed this petition.

I have gone through the order of the learned Judge of the Small Causes and the evidence. The first respondent has examined herself as P.W.1 has stated that her husband was working for the past 20 year earlier to coming to India as a Psychiatrist and Neurologist at Florida, America. They had to return to India

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after he retired from service. She and her husband have taken up a permanent residence at Bangalore and are now residing at the residence situated adjacent to the schedule property. She also deposed that they are only green card holders and not citizens of America and they have no intention to settle anywhere other than Bangalore permanently. She has also deposed that her husband intends to install an X-ray plant, wants to have one room for consultancy and other rooms for providing place to the patients as Waiting room. Nothing is seriously challenged in cross-examination to disprove the same. This evidence has been corroborated by her husband's evidence ^{who} ~~and~~ has been examined as P.W.2. He has deposed that the retirement benefits after he retired from service are not adequate to meet his economic requirements as he has not merely to maintain himself and his wife but also has to spend for medical expenses of his wife who is a diabetic patient. With the intention to augment income and also set-up practice, he intends to have a clinic for treating Psychiatric and neurologic patients. Though he has been cross-examined at length, nothing has been elicited to

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disprove the said statement. The evidence of the tenant also in no way disproves the respondents case.

The learned Judge of the Small Causes after appreciating the evidences of both the respondents and the petitioner has held that the requirements of the respondents is both reasonable and bonafide. This finding cannot be faulted with.

The defence of the tenant raised before the learned Judge viz., that respdt.2 herein is an aged person of 75 years and therefore it is improbable for him to set-up a practise has been repelled by the learned Judge in the following terms:

"Secondly it was contended that the second petitioner is more than 75 years old and he cannot practice. Court had an occassion to see P.W.2 when he attended the Court to give evidence on several hearing dates. He keeps good health".

So also the learned Judge has repelled another defence of the tenant viz., that the respondents are intending to sell the property and permanently settle at America on the ground that P.,Ws.1 & 2 both have settled at Bangalore and they intend to continue the

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same. Learned Judge also has repelled another contention of the tenant viz., that respdt. 2 can carry on his profession at his residence which can accommodate a clinic also on the ground that it is dangerous to treat Psychiatric and neuro patients in the residence of a person and they have to be treated in a separate place other than the residence.

There is no reason to differ from the above finding of the Court. The Court below has held that the respondent suffers greater hardship in case the eviction is rejected. On the basis of the evidence and having regard to the dimension of the schedule property viz., a shop measuring 10 feet by 12 feet and the requirements of the respondents viz., wanted to install an x-ray plant, one room for consultancy service and other requirements, the Court has ruled out ordering of partial eviction. These findings are on appreciation of evidence led by the parties. There is no reason to differ with these findings also.

For the reasons stated above, this revision petition is liable to be dismissed and is accordingly dismissed. However the

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tenant/petitioner is granted one year's time
from today to quit and deliver vacant
possession of the premises.

Petition dismissed.

Sd/-
JUDGE

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